

WORKERS' COMPENSATION DIVISION[876]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby gives Notice of Intended Action to amend Chapter 1, "Purpose and Function," Chapter 2, "General Provisions," Chapter 3, "Forms," Chapter 4, "Contested Cases," Chapter 5, "Declaratory Orders," Chapter 8, "Substantive and Interpretive Rules," and Chapter 11, "Electronic Data Interchange (EDI)," Iowa Administrative Code.

These amendments are proposed to implement a paperless filing system for contested cases, petitions for declaratory orders, and electronic filing under the Electronic Data Interchange (EDI).

The Division has determined that these amendments will have no impact on small business within the meaning of Iowa Code section 17A.4A.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 23, 2010, to the Workers' Compensation Commissioner, Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These amendments do not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

These amendments are intended to implement Iowa Code sections 85.26, 86.8, 86.11, 86.12 and 86.13. The following amendments are proposed.

ITEM 1. Adopt the following **new** unnumbered paragraph at the end of rule **876—1.1(86,17A)**:

The division of workers' compensation requires the filing of EDI forms, petitions, pleadings, responses, and any other submissions to be effectuated by use of the division's paperless electronic record filing and electronic claim submission system (PERFECT System). The Web site address for the PERFECT System is www.perfect.iwd.iowa.gov.

ITEM 2. Adopt the following **new** rules 876—2.7(86) to 876—2.9(86):

876—2.7(86) Official record. The electronic record made and maintained by the division of workers' compensation is the official record of a case unless recording by different means is ordered under 876—subrule 4.48(12).

876—2.8(86) Document requirements. Pleadings, responses to pleadings, exhibits, and transcripts submitted to the division of workers' compensation shall be scanned, attached, and filed as portable document format (.pdf) image-on-text documents (searchable .pdf). Transcripts submitted shall include an index. Attachments shall not exceed 5 MB. Documents exceeding 5 MB shall be divided and submitted as separate attachments to comply with this size limit. All filings pursuant to this rule shall be submitted via the PERFECT System unless otherwise ordered by the workers' compensation commissioner or a deputy workers' compensation commissioner.

876—2.9(86) Effective date of PERFECT System rules. All rules of the division of workers' compensation that relate to the PERFECT System shall be effective on [effective date of this rule].

ITEM 3. Amend subrules 3.1(1) and 3.1(2) as follows:

3.1(1) First report of injury (FROI). The first report of injury (FROI) contains general information concerning the employee, the employer and the claimed injury. It is to be filed whether or not an adjudication or admission of liability for the injury exists and is to be filed as provided in Iowa Code

section 86.11 and 876—Chapter 11. The first report of injury is to be filed when demanded by the commissioner pursuant to Iowa Code section 86.12 and when an employer is served with an original notice and petition that alleges an injury for which a first report has not been filed. If an original notice and petition alleges multiple injury dates, only one first report of injury should be filed, and the date of injury reported should be the date the reporter uses when adjusting the claim. In the event the transmission of a first report of injury (FROI) contains errors (TE), the errors shall be corrected within five days of the date of notification by the agency.

3.1(2) Subsequent report of injury (SROI). The subsequent report of injury (SROI) provides for filing of notice of commencement of payments, correcting erroneous claim information, supplying additional information, denying compensability, agreeing to the weekly benefit rate and agreeing to make payments under the Workers' Compensation Act, reporting the status of a claim, or recording benefits paid. Notice of commencement of payments shall be filed within 30 days of the first payment. When liability on a claim is denied, a letter shall be sent to claimant stating reasons for denial and a claim denial report shall be filed. The subsequent report of injury (SROI) shall also be filed when compensation is terminated or interrupted. Medical data supporting the action taken shall be filed when temporary total disability or temporary partial disability exceeds 13 weeks or when the employee sustains a permanent disability. In the event the transmission of a subsequent report of injury (SROI) contains errors (TE), the errors shall be corrected within 15 days of the date of notification by the agency.

ITEM 4. Amend rule 876—4.3(85,85A,86,87), introductory paragraph, as follows:

876—4.3(85,85A,86,87) Compliance proceedings. If the workers' compensation commissioner shall have reason to believe that there has not been compliance with the workers' compensation law by any person or entity, the commissioner may on the commissioner's own motion give notice to the person or entity and schedule a hearing for the purpose of determining whether or not there has been compliance by the person or entity. The notice shall state the time and place of the hearing and a brief statement of the matters to be considered. The notice of hearing may be given by ordinary mail or by the PERFECT System and may be given to the insurer for the employer in lieu of the employer as permitted by Iowa Code section 87.10 if the insurer has filed a report, pleading or motion that acknowledges that it is the insurer for the claim at issue. Following the hearing, the commissioner may issue a finding regarding compliance. In the event a failure to comply is found, the commissioner may impose sanctions in accordance with Iowa Code ~~sections~~ section 86.12, 86.13 or 86.13A or order compliance within a specified time and under specified circumstances. The workers' compensation commissioner may file a certified copy of the order in an appropriate district court and may file a certified copy of the order with the Iowa insurance division ~~[commerce department]~~ of the department of commerce with a request for action by the insurance division upon failure to comply with the order.

ITEM 5. Amend rule 876—4.7(86,17A), introductory paragraph, as follows:

876—4.7(86,17A) Delivery of notice, orders, rulings and decisions. Delivery of the original notice shall be made by the petitioning party as provided in Iowa Code section 17A.12(1) except that a party may deliver the original notice on a nonresident employer as provided in Iowa Code section 85.3. A proposed or final decision, order or ruling may be delivered by the division of workers' compensation to any party by regular mail or by electronic mail from the division of workers' compensation's PERFECT System. ~~On or after July 1, 2009, a proposed or final decision, order or ruling may be delivered by the division of workers' compensation to any party by E-mail.~~

ITEM 6. Amend paragraphs **4.8(2)“a”** and **“b”** as follows:

a. For all original notices and petitions for arbitration or review-reopening relating to weekly benefits filed on account of each injury, gradual or cumulative injury, occupational disease or occupational hearing loss alleged, a filing fee shall be paid at the time of filing. The filing fee for original notices and petitions filed on or after July 1, 1988, but before July 1, 2009, is \$65. The filing fee for petitions filed on or after July 1, 2009, is \$100. No filing fee is due for the filing of other actions where the sole relief sought is one of the following or a combination of any of them: medical and other benefits

under Iowa Code section 85.27; ~~burial benefits, Iowa Code section 85.28~~; determination of dependency, Iowa Code sections 85.42, 85.43, and 85.44; equitable apportionment, Iowa Code section 85.43; ~~second injury fund, Iowa Code sections 85.63 to 85.69~~; vocational rehabilitation benefits, Iowa Code section 85.70; approval of legal, medical and other fees under Iowa Code section 86.39; commutation, Iowa Code sections 85.45 to 85.48; employee's examination, Iowa Code section 85.39; employee's examination or sanctions, Iowa Code section 85.39; application for alternate care, Iowa Code section 85.27; determination of liability, reimbursement for benefits paid and recovery of interest, Iowa Code section 85.21; interest, Iowa Code section 85.30; penalty, Iowa Code section 86.13; application for approval of third-party settlement, Iowa Code section 85.22; and petitions for declaratory orders or petitions for interventions filed pursuant to 876—Chapter 5. An amendment to a petition that was filed on or after July 1, 1988, that alleges an additional or alternate date of occurrence does not require payment of an additional filing fee if a filing fee was paid when the petition was filed.

~~b. One filing fee shall be required for as many original notices and petitions as are filed on the same day on account of one employee against a single alleged employer or against entities alleged to be employers in the alternative or alleged to be dual employers. A filing fee shall be required for each original notice and petition filed.~~ If filing fees have been overpaid, the amount overpaid shall be refunded to the party who made the overpayment.

ITEM 7. Rescind and reserve paragraph **4.8(2)“e.”**

ITEM 8. Amend paragraphs **4.8(2)“g”** and **“h”** as follows:

~~g. The filing fee shall be paid at the same time the petition is filed. Checks should be made payable to the “Iowa Division of Workers’ Compensation.” If the payment of the filing fee is made by an insufficient funds check or a check on which payment is stopped or a check on which payment is otherwise not honored, it will be treated as a failure to pay the correct filing fee. See 4.8(2)“e.” One check may be submitted for payment of more than one filing fee if more than one filing fee is due from a petitioner for cases filed on account of an employee. Separate checks must be submitted for each petitioner’s case or cases. The filing fee shall be paid electronically with a credit card or electronic check or by other electronic means as allowed within the PERFECT System maintained by the division of workers’ compensation. Cash or nonelectronic payment will not be accepted without an order granting permission for nonelectronic payment. Any statute of limitations is not stayed if a party has requested nonelectronic payment and is awaiting an order.~~

~~h. The workers’ compensation commissioner may accept for filing an original notice and petition without prepayment of the filing fee if in the discretion of the workers’ compensation commissioner the petitioner is unable to pay the fee at the time of filing. A deferral of payment of the filing fee shall only be granted upon written application by the petitioner. The application shall be filed at the same time the original notice and petition is filed. The application shall be in the form required by the workers’ compensation commissioner and shall include an affidavit signed by the petitioner be verified by the petitioner. When payment of the filing fee is deferred, provisions for payment of the filing fee must be included in any settlement submitted to the workers’ compensation commissioner for approval or taxed as costs. When the application for deferral of payment of the filing fee is denied, the filing fee shall be paid as ordered. See 4.8(2)“e.”~~

ITEM 9. Amend rule 876—4.9(17A) as follows:

876—4.9(17A) Appearance Appearances and responses, pleading pleadings and motions. Appearances and responses, pleadings and motions shall be made using the division of workers’ compensation’s PERFECT System. Registration with the division of workers’ compensation’s PERFECT System and approval by the workers’ compensation commissioner are required for parties using the PERFECT System to file appearances and responses, pleadings and motions. Registration is accepted at www.perfect.iwd.iowa.gov. After a matter has been commenced and the respondent has been served with original notice, subsequent filings or submissions do not require proof of service to parties of record who are registered with the PERFECT System as those parties will be automatically notified by the system of a filing. Responses to pleadings and motions shall be made as follows:

4.9(1) Respondent—appearance. A respondent shall appear by filing an answer or a motion within 20 days after the service of the original notice and petition upon the respondent. ~~The appearance shall include the E-mail address and the fax number of the respondent, if available, if the respondent is not represented by counsel. The caption of an answer shall disclose the file number of the compliance file in which the first report of injury was filed for the injury that is alleged in the original notice and petition.~~ A respondent shall file a response by answer or motion by using the PERFECT System for all claims in which a petition was filed within the system or pursuant to an order of the workers' compensation commissioner or a deputy workers' compensation commissioner.

4.9(2) to 4.9(5) No change.

4.9(6) Form, submission and ruling on motions. All motions, including pre-answer motions; ~~and motions for summary judgment and applications for adjudication of law points,~~ shall have appended to them a concise memorandum brief and argument. All motions ~~and applications for adjudication of law points~~ except motions for summary judgment shall be deemed submitted without hearing on the record presented on the tenth day following filing. Motions for summary judgment shall be deemed submitted as provided in Iowa Rule of Civil Procedure 1.981. Resistances to motions ~~and applications for adjudication of law points~~ shall have appended to them a concise memorandum brief and argument; and shall be filed on or before the date of submission. Briefs and arguments are waived unless appended to the motion, application or resistance.

An order may be entered consolidating any motion for ruling with hearing of the contested case. Any party desiring a ruling on a motion prior to hearing may concisely set forth the necessity of prior ruling in the motion, application or resistance. If a pre-answer motion alleging lack of jurisdiction is overruled or consolidated with hearing of the contested case, the party shall plead to the merits and proceed to hearing of the contested case without submitting to the jurisdiction of the workers' compensation commissioner. If a motion attacking a pleading is consolidated with hearing of the contested case, the party shall respond to the pleading in the same manner as if the motion had been overruled.

4.9(7) Consolidation. Any party may file a motion to consolidate common questions of fact and law surrounding an injury or a series of injuries. The motion shall be deemed approved if no resistance to the motion is filed with the workers' compensation commissioner within ten days of the filing of the motion. ~~No~~ An order granting the motion will be filed by the workers' compensation commissioner or a deputy workers' compensation commissioner. ~~As an alternative, the parties may make an oral motion to consolidate common questions of fact or law at the time of the pretrial hearing. A ruling on the motion will be included with the order issued from the pretrial hearing.~~

4.9(8) Withdrawal of counsel. Counsel may withdraw if another counsel has appeared or if the client's written consent accompanies the withdrawal.

Under all other circumstances, counsel may withdraw only upon the order of the workers' compensation commissioner after making written application. Counsel shall give the client written notice that the client has the right to object to the withdrawal by delivering written objections and a request for a hearing to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319, within ten days following the date the notice was mailed or personally delivered to the client. Counsel requesting to withdraw shall provide assistance to the client in filing an objection to the motion to withdraw using the PERFECT System and shall notify the client that counsel will provide such assistance. Counsel's application shall be accompanied by proof that a copy of the application and notice was sent by certified mail addressed to the client's last-known address or was delivered to the client personally. If no objections are timely filed, the withdrawal will become effective when approved by the workers' compensation commissioner. If objections are timely filed, a hearing on the application will be held. No withdrawal under this subrule will be effective without the approval of the workers' compensation commissioner. The filing of an application to withdraw stays all pending matters until a ruling is made on the application.

4.9(9) No change.

This rule is intended to implement the provisions of Iowa Code section 17A.12.

ITEM 10. Amend rule 876—4.11(86), introductory paragraph, as follows:

876—4.11(86) Signatures Attestation of signatures on documents and papers. All documents and papers required by these rules, the Iowa rules of civil procedure as applicable, or a statutory provision shall be signed and the signature attested to by the party if unrepresented or the party's attorney if represented. A party or party's attorney registered with the PERFECT System shall attest to the signature of the party or the party's attorney as allowed with the system. The party's signature and attestation in addition to the attorney's signature and attestation shall be necessary only when otherwise required by these rules, the Iowa rules of civil procedure as applicable, ~~and~~ or any statutory provision.

ITEM 11. Amend rule 876—4.13(86), introductory paragraph, as follows:

876—4.13(86) Method of service. Except as provided in 876—4.6(85,86,17A) and 876—4.7(86,17A), service of all documents and papers to be served according to 876—4.12(86) and 876—4.18(85,86,17A) or otherwise upon a party represented by an attorney shall be made upon the attorney unless service upon the party is ordered by the workers' compensation commissioner. Service upon the attorney or party shall be made by using the PERFECT System. ~~delivery of a copy to or mailing a copy to the last known address of the attorney or party, or if no address is known, by filing it with the division of workers' compensation. Delivery of a copy within this rule means: Handing it to the attorney or party; leaving it at the office of the attorney or party's office or with the person in charge of the office; or if there is no one in charge of the office, leaving it in a conspicuous place in the office; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house, or usual place of abode with some person of suitable age and discretion who is residing at the dwelling or abode. Service by mail under this rule is complete upon mailing. No documents or papers referred to in this rule shall be served by the workers' compensation commissioner.~~

ITEM 12. Amend rule 876—4.15(86), introductory paragraph, as follows:

876—4.15(86) Proof of service. Proof of service of all documents and papers to be served on another party under 876—4.12(86) shall be fulfilled by filing the document or paper with the division of workers' compensation using the PERFECT System. ~~filed with the division of workers' compensation promptly, and in any event, before action is to be taken thereon by the workers' compensation commissioner or any party unless a responsive pleading has been filed. The proof shall show the date and manner of service and may be by written acknowledgment of service, by certification of a member of the bar of this state, by affidavit of the person who served the papers, or by any other proof satisfactory to the workers' compensation commissioner.~~

ITEM 13. Rescind and reserve rule **876—4.16(86).**

ITEM 14. Amend subrule 4.19(3) as follows:

4.19(3) For contested cases that were filed on or after July 1, 2004, the following time limits govern prehearing procedure, completion of discovery and case management in contested cases, except proceedings under rules 876—4.46(17A,85,86) and 876—4.48(17A,85,86) and except when otherwise ordered by the workers' compensation commissioner or a deputy workers' compensation commissioner.

a. Within 120 days, ~~but not less than 60 days,~~ following filing of a petition, the counsel of record for all parties and all pro se litigants shall schedule a hearing or hearings by using the PERFECT System. ~~jointly contact the hearing administrator by telephone at (515)281-6621 between the hours of 8:30 a.m. and 11 a.m. central time, Monday through Friday, excluding holidays, or by E-mail at dwc.hearing@iwd.state.ia.us to schedule a hearing date, place and time. Claimant has primary responsibility for initiating the contact. The parties shall identify the case by file number and the names of the parties and request that the hearing be set at a specific date, place and time that is shown to be available on the hearing scheduler published on the division's Web site. Primary and backup times must be requested for hearings in venues other than Des Moines. When the contact is made by E-mail, a copy of the request shall be sent to each opposing party, and the hearing administrator will reply indicating whether or not the case is assigned at the time requested. If a request is denied, the parties shall continue~~

~~to contact the hearing administrator by telephone or E-mail until the case is scheduled or a prehearing conference is ordered. A joint scheduling contact may be initiated by any party at any other time agreeable to the parties. If more than 120 days have elapsed since the petition was filed, any party may move to schedule the hearing at a particular date, time and place that is available and the parties have not scheduled a hearing or hearings, the hearing administrator may, without prior notice to the parties, assign the case for hearing at that any date, time and place. The hearing date shall be within 12 months following the date the petition was filed or as soon thereafter as reasonably practicable as determined by the hearing administrator. If the parties fail to schedule the hearing with the hearing administrator, the case will be scheduled at the discretion of the hearing administrator without prior notice to the parties.~~

b. and c. No change.

d. At least ~~30~~ 45 days before hearing, counsel of record and pro se litigants shall serve a witness and exhibit list on all opposing counsel and pro se litigants and exchange all intended exhibits that were not previously required to be served. The witness list shall name all persons, except the claimant, who will be called to testify at the hearing or who will be deposed prior to the hearing in lieu of testifying at the hearing. ~~The~~ If the exhibit list does not contain actual exhibits, the exhibit list must specifically identify each exhibit in a way that permits the opposing party to recognize the exhibit. The description for a document should include the document's date, number of pages and author or source. Exhibits that were specifically identified when served pursuant to rule 876—4.17(17A,85,86) or in a discovery response may be collectively identified by describing the service such as "exhibits described in the notices served pursuant to rule 876—4.17(17A,85,86) on May 7, June 11 and July 9, 2004." Blanket references such as "all medical records," "personnel file" or "records produced during discovery" do not specifically identify an exhibit. ~~A party may serve a copy of the actual intended exhibits in lieu of an exhibit list.~~ At least 30 days before hearing, counsel of record and pro se litigants shall file proposed exhibits by utilizing the PERFECT System. Counsel of record and pro se litigants shall file all written objections and motions to exclude evidence at least 15 days before the hearing. Evidentiary depositions pursuant to Iowa Code section 86.18(2) may be taken at any time before the hearing in lieu of the witness testifying at the hearing.

e. If evidence is offered at hearing that was not disclosed in the time and manner required by these rules, as altered by order of the workers' compensation commissioner or a deputy workers' compensation commissioner or by a written agreement by the parties, the evidence ~~will~~ may be excluded if the objecting party shows that receipt of the evidence would be unfairly prejudicial. Sanctions may be imposed pursuant to 876—4.36(86) in addition to or in lieu of exclusion if exclusion is not an effective remedy for the prejudice. If a party offers an exhibit or document in paper form which is accepted by the workers' compensation commissioner or a deputy workers' compensation commissioner, the party shall have 5 working days to submit an electronic copy of the document by using the PERFECT System.

f. Counsel and pro se litigants shall prepare and electronically file a joint hearing report that defines the claims, defenses, and issues that are to be submitted to the deputy commissioner who presides at the hearing at least 15 days before the hearing. ~~The hearing report shall be signed by all counsel of record and pro se litigants and submitted to the deputy when the hearing commences.~~

g. If a filer is unable to meet a nonjurisdictional filing deadline because of a technical failure in the PERFECT System, the filer must file the document using the earliest available electronic or nonelectronic means. The filing of the document will be accepted by the division of workers' compensation as timely unless the commissioner or deputy commissioner determines that the untimely filing of the document should not be excused.

h. Jurisdictional deadlines, including but not limited to any applicable statute of limitations, cannot be extended. It is the filer's responsibility to ensure that a document is filed timely to comply with jurisdictional deadlines. A technical failure, including a failure of the PERFECT System, will not excuse a failure to comply with a jurisdictional deadline.

i. A filer is not excused from missing a jurisdictional or nonjurisdictional filing deadline because of problems attributable to the filer (such as telephone line problems, problems with the filer's Internet service provider, hardware problems, software problems, etc.).

ITEM 15. Amend rule 876—4.24(17A,86) as follows:

876—4.24(17A,86) Rehearing. Any party may file an application for rehearing of a proposed decision in any contested case by a deputy commissioner or a decision in any contested case by the workers' compensation commissioner within 20 days after the issuance of the decision. ~~A copy of such application shall be timely mailed by the applicant to all parties of record not joining therein.~~ An application for rehearing shall be deemed denied unless the deputy commissioner or workers' compensation commissioner rendering the decision grants the application within 20 days after its filing. For purposes of this rule, motions or requests for reconsideration or new trial or retrial or any reexamination of any decision, ruling, or order shall be treated the same as an application for rehearing.

ITEM 16. Amend rule 876—4.27(17A,86), introductory paragraph, as follows:

876—4.27(17A,86) Appeal. Except as provided in 876—4.2(86) and 876—4.25(17A,86), an appeal to the commissioner from a decision, order or ruling of a deputy commissioner in contested case proceedings shall be commenced within 20 days of the filing of the decision, order or ruling by filing a notice of appeal with the workers' compensation commissioner. If two or more contested cases were consolidated for hearing, a notice of appeal in one of the cases is an appeal of all the cases. ~~The date the notice of appeal is filed shall be the date the notice of appeal is received by the agency. *Miller v. Civil Constructors*, 373 N.W.2d 115 (Iowa 1985).~~ The notice shall be served on the opposing parties as provided in 876—4.13(86). An appeal shall be heard in Polk County or in any location designated by the workers' compensation commissioner.

ITEM 17. Amend subrules 4.28(2) and 4.28(6) as follows:

4.28(2) Cross-appeals. In the event of a cross-appeal, appellee (cross-appellant) shall serve its brief within 20 days after service of the brief of appellant. Appellant (cross-appellee) shall serve its responsive reply brief within 20 days after service of the brief of appellee. Appellee (cross-appellant) may serve a reply brief within 10 days after service of appellant's reply brief. ~~When both parties appeal, the first to serve notice of appeal shall be appellant unless both serve their notice on the same date, in which case the claimant shall be appellant. When more than one party appeals, the party filing the first notice of appeal will be designated the appellant and the party filing a subsequent notice of appeal will be designated the cross-appellant.~~

4.28(6) Extensions. One extension of up to 30 days ~~will~~ may be granted if a motion showing good cause to extend the time is served on or before the date service of the brief is required by this rule. A subsequent extension requires a motion showing that good cause remains for granting an extension of time. The commissioner may grant a party the right to serve and file a brief after the time to do so has expired if the appeal or cross-appeal has not been dismissed or decided, the party moves for relief within 60 days from the date service of the brief was due, and the motion shows that the failure to timely serve the brief was due to a good cause that could not have been avoided through the exercise of reasonable diligence.

ITEM 18. Amend rule 876—4.29(86,17A), introductory paragraph, as follows:

876—4.29(86,17A) Review upon motion. Except as provided in 876—4.25(17A,86),² the commissioner may review the decision, order or ruling of a deputy commissioner in any contested case upon the commissioner's own motion. Except as provided in 876—4.25(17A,86), the motion to review a decision, order or ruling in all contested cases must be filed within 20 days of the filing of the decision, order or ruling. The commissioner shall specify in a notice ~~mailed to the parties by certified mail, return receipt requested, on the date of filing of the motion~~ the issues to be reviewed and the additional evidence, if any, to be obtained by the parties. The hearing under this rule shall be heard in Polk County or in any locality designated by the workers' compensation commissioner.

ITEM 19. Rescind and reserve rule **876—4.39(17A,86)**.

ITEM 20. Amend rule 876—4.48(17A,85,86) as follows:

876—4.48(17A,85,86) Application for alternate care.

4.48(1) to 4.48(4) No change.

4.48(5) Application. The application shall: be filed on the online form provided by the workers' compensation commissioner; concern only the issue of alternate care; state the reasons for the employee's dissatisfaction with the care chosen by the employer; be served on the employer; contain proof of service on the employer; and specify whether a telephone or in-person hearing is requested. The hearing shall be by telephone or other digital means unless a motion is granted upon a party's showing of good cause for an in-person hearing.

4.48(6) and 4.48(7) No change.

4.48(8) Notice of hearing. The workers' compensation commissioner will notify the parties by ~~ordinary mail or by facsimile transmission (fax)~~ order of the time, place and nature of hearing. No notice will be made until a proper application is received by the workers' compensation commissioner. The notice will specify whether the hearing will be by telephone or other digital means or in person.

4.48(9) to 4.48(11) No change.

4.48(12) Hearing. The hearing will be held either by telephone, by digital voice or video technology or in person in Des Moines, Iowa. The employer shall have the right to request an in-person hearing if the employee has requested a telephone hearing in the application, and such request for an in-person hearing may be granted for good cause shown. The employer shall on the record respond to the allegations contained in the application. The hearing will be electronically recorded, and the workers' compensation commissioner or a deputy workers' compensation commissioner may order that a certified shorthand reporter be present or may order other mechanical means of recording the proceedings. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing.

If the hearing was electronically recorded, copies of the tape will be provided to the parties. A transcript shall be provided by the appealing party pursuant to Iowa Code subsection 86.24(4) and a copy thereof shall be served on the opposing party at the time the transcript is filed with the workers' compensation commissioner unless the parties submit an agreed transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the workers' compensation commissioner for resolution. Any transcription charges incurred by the workers' compensation commissioner in resolving the dispute shall be initially paid pursuant to Iowa Code subsection 86.19(1) by the party who disputes the accuracy of the transcript prepared by the appellant.

4.48(13) and 4.48(14) No change.

This rule is intended to implement Iowa Code sections 17A.12, 85.27, 86.8 and 86.17.

ITEM 21. Adopt the following new rules 876—4.50(86) and 876—4.51(86):

876—4.50(86) Agency notice of judicial review matters. A party who petitions for judicial review is responsible for electronically filing with the division of workers' compensation's PERFECT System a copy of the petition for judicial review within 10 days of filing the petition with a district court. A party shall also file a copy of each appellate court decision within 10 days of the date the appellate court decision was issued and filed. Within 45 days of the filing of the final appellate court decision, the same party shall notify the division of workers' compensation that the record is closed.

This rule is intended to implement Iowa Code section 86.8.

876—4.51(86) Conversion of paper files into the PERFECT System. By July 1, 2011, the defendants, including employers, insurance carriers and the second injury fund of Iowa, named in every file of a contested case proceeding initiated before the effective date of the implementation of the PERFECT System shall convert and transfer all the contents of each file into the PERFECT System. Documents that are converted and transferred into the PERFECT System are presumed to be an accurate reproduction

of the original. The defendants shall give notice of the conversion and transfer of files into the PERFECT System to all other parties no later than August 1, 2011. Any objection to the transferred file not being an accurate reproduction of the original or that the entire contents of the file was not transferred must be filed with the workers' compensation commissioner by August 30, 2011. All filings subsequent to the transfer shall be by use of the PERFECT System.

This rule is intended to implement Iowa Code section 86.8.

ITEM 22. Amend rule 876—5.1(17A), introductory paragraph, as follows:

876—5.1(17A) Petition for declaratory order. Any person may file a petition with the workers' compensation commissioner for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the workers' compensation commissioner, at the office of the workers' compensation commissioner. ~~A petition is deemed filed when it is received by that office. The workers' compensation commissioner shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose.~~ The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 23. Amend rule 876—5.6(17A) as follows:

876—5.6(17A) Service and filing of petitions and other papers.

5.6(1) Service. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All documents filed shall indicate all parties or other persons served and the date and method of service ~~if service is not completed using the PERFECT System.~~

5.6(2) Filing. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Workers' Compensation Commissioner, 4000 E. Grand, Des Moines, Iowa 50319-0209 ~~using the PERFECT System.~~

5.6(3) Method of service, time of filing, and proof of service. Method of service and proof of service shall be as provided by rules 876—4.13(86) and 876—4.15(86). ~~All documents are considered filed when received by the agency.~~

ITEM 24. Amend rule 876—5.11(17A) as follows:

876—5.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be ~~mailed promptly~~ delivered as provided by rule 876—4.7(86,17A) to the original petitioner and all intervenors.

ITEM 25. Rescind and reserve rule ~~876—8.7(86)~~.

ITEM 26. Amend rule 876—11.2(85,86) as follows:

876—11.2(85,86) Definitions. The following definitions apply to 876—Chapter 3 and this chapter.

“EDI” (electronic data interchange) means electronic transmission or reception, or both, of data through a telecommunications process utilizing a value-added network or the Internet as set forth in the EDI partnering agreement.

“EDI partnering agreement” means the written agreement between an entity and the division of workers' compensation specifying the terms and manner of reporting by EDI.

“Filed” means receipt and acceptance of a report by the division of workers' compensation. A report is considered to be “filed” on the date it is accepted (TA) by the division of workers' compensation. A report that is submitted but rejected (TR) is not considered “filed.” A FROI report that is accepted with errors (TE) must be corrected within ~~five~~ 5 days after the ~~acknowledgement~~ acknowledgment is sent. A SROI report that is accepted with errors (TE) must be corrected within 15 days after the acknowledgment is sent.

~~“Implementation plan” means the written document prepared by a reporter specifying a timetable for reporting by EDI.~~

“Report” means a first report of injury (FROI) or a subsequent report of injury (SROI), or both.

“Reporter” means the person who is responsible for reporting to the division of workers’ compensation pursuant to the Iowa workers’ compensation laws and includes an employer, an employer who has been relieved from insurance pursuant to Iowa Code section 87.11, and an insurance carrier which provides an employer workers’ compensation insurance.

“Reporting” means submission of claims data and data fields of information of a report.

ITEM 27. Amend rule 876—11.3(85,86) as follows:

876—11.3(85,86) Form of reporting. The format of EDI reporting must be the current version of the International Association of Industrial Accident Boards and Commissions (IAIABC) Release ~~2~~ 3 FROI/SROI.

ITEM 28. Rescind and reserve rule **876—11.5(85,86)**.

ITEM 29. Amend rule 876—11.6(85,86) as follows:

876—11.6(85,86) Mandatory reporting deadline. All reporters must sign a partnering agreement and begin reporting by EDI Release 3 no later than ~~July 1, 2001~~ March 1, 2011. Reporting by any means other than EDI Release 3 after ~~July 1, 2001~~ March 1, 2011, will not be acceptable. Reporters are responsible for reporting by EDI. A reporter may contract with another entity for reporting, but the reporter is ultimately responsible for reporting. Any entity reporting on behalf of a reporter must also sign an EDI partnering agreement.

ITEM 30. Adopt the following **new** unnumbered paragraph at the end of rule **876—11.7(85,86)**:

A reporter shall file a change to FROI and SROI reports whenever a reporter is made aware that information previously submitted is incorrect. The reporter shall file a change within 45 days after being made aware that previously submitted information is incorrect. This information includes, but is not limited to, the injured employee’s social security number, date of injury, employer’s name, and injured employee’s name. A reporter shall also correct information used in calculation of the compensation rate including, but not limited to, marital status and number of dependents, average weekly wage, and compensation rate at the time of the employee’s injury. If a final decision by the division of workers’ compensation or a court of law changes any of the previously submitted information, the attorney for the employer and insurance carrier shall notify the reporter. The reporter shall file a change within 45 days of the final decision.